Repatriate sale proceeds to India

Since there will be tax incidence in the foreign country, an investor has to seek credits in India

SANJAY KUMAR SINGH

With Indian real estate, especially its residential segment, caught in a prolonged slump, high net worth individuals (HNIs) are increasingly gravitating towards foreign markets. Knight Frank, a real estate consultancy, had recently reported a rise in the number of Indian home buyers in the London market. Indian HNI investors are also making a beeline for properties in the US, Canada, Australia, the United Arab Emirates (UAE), and so on.

Alongside, the Income Tax (I-T) Department in India has also become more vigilant about tracking foreign transactions. India has signed the double taxation avoidance agreement (DTAA) with around 90 countries. This agreement allows the tax authorities to ask their foreign counterparts for information on transactions done by their country's residents. This makes it essential for HNIs investing in real estate abroad to be fully aware of the rules that govern the purchase of foreign property.

Remitting money abroad: Under the Reserve Bank of India's (RBI) liberalised remittance scheme (LRS), a resident Indian can remit $250,000 in each financial year to buy immovable property abroad. "Over the years, the RBI has relaxed the norms pertaining to investments made outside, which has led Indians to consider property buying abroad. In 2015, it doubled the limit under LRS for resident individuals to the current level," says Anuj Puri, chairman, ANAROCK Property Consultants.

Form A2 has to be filled at a bank for remitting money via LRS. Details of all LRS transactions done during that financial year have to be provided in it (so that a person doesn't breach the ceiling). "If multiple members of the family plan to buy the property jointly, then each one can remit up to $250,000. In such a case, each member must also get a share in the property in the proportion contributed," says Sonu Iyer, partner & national leader, people advisory services, EY India. Another form called 15CA has to be filled. In this form, a chartered accountant certifies that the money being remitted has been subject to tax in India.

BLACK MONEY ACT: STRINGENT PENALTIES

Whom does it apply to	Resident ordinarily resident (ROR)
What is its purpose	To tax or penalise RORs having undisclosed foreign asset or income
Fine on foreign property bought with reported income	₹10 lakh
Tax on undisclosed income/value of asset	Flat 30 per cent
Penalty on property purchased using unreported income	300% of tax computed, imprisonment of six months to 10 years

"If family members buy a property jointly, then each one can remit up to $250,000. Each member must then get a share in the property in the proportion contributed"

SONU IYER, Tax Partner & National Leader, People Advisory Services, EY India

Declaration of foreign property: If an individual is a resident and ordinarily resident (ROR) in India, he needs to provide details of any foreign property he owns while filing his income-tax return (ITR). This has to be provided in Schedule FA of the ITR form. "Non-residents and resident but not ordinarily resident (RNOR) are exempted from providing this information," says Naveen Wadhwa, DGM, Taxmann.com. Details like the address of the property, date of acquisition, the amount invested, etc. have to be provided. Failure to disclose foreign income and assets invites penalties under the provisions of the Black Money Act (see table).

Taxation of rental income and capital gains: An ROR's global income is taxed in India, including income from property. The taxation norms on rental income and capital gains are similar to those that apply to resident Indians.

First, the rental income for the year is taken and a standard deduction of 30 per cent is applied to it. The amount after deduction is added to the head "income from house property" to calculate total income, and then the individual is taxed at the applicable slab rate.

If a resident sells a property abroad, he will have to pay capital gains tax on it in India. If ... years, the seller will get indexation benefit and will be taxed at 20 per cent. If the property has been held for less than two years, short-term capital gains tax rate will apply. The gain will be added to the individual's income and will be taxed at the slab rate.

Both rental income and capital gains will also be taxed [illegible] which the property is [illegible] (holds true for most countries). "The Indian resident will have to look at the provisions of the double taxation avoidance agreement (DTAA) with that country, or get an expert to do so, to see what credits he can claim in India on tax paid overseas," says Wadhwa.

Repatriation of money back to India: When you purchase a property by sending money through the LRS route, there is no specific requirement to bring the money back to India. "The investor can retain abroad the income earned from an LRS investment. He can reinvest that money overseas," says Rupali Singhania, partner, Areete Consultants LLP. The authorities in India have already ensured that tax has been paid on the money going abroad, and it is going out for a bona fide purpose.

However, if a person is a resident of India under the Foreign Exchange Management Act (FEMA) and the I-T Act, and he sells a foreign property that he has inherited, the money from such a sale must be brought back into India.

How to respond to a tax notice: First, the assessee must review his I-T return to see if he had reported his foreign income and assets in the concerned year. Next, he should provide all the supporting documents to show his sources of income. Rental income from a property [illegible] abroad, for instance, have been reported under the head "income from house property". The bank statement of the account into which rental income was credited can be produced. If asked to disclose the source of funds used for purchase, the person will have to show his salary or business income, as declared in his tax returns over the years. If he had sold a property in India to purchase a property overseas, he will have to dig up the trail of documents showing this sale. Note that loans cannot be taken in India to ...

When concession is a penalty

PLAINLY SPEAKING

HARSH ROONGTA

The trend in Budget 2020 seems to be towards a reduction in tax rates in lieu of giving up exemptions and deductions. Currently, it is only an option for individuals, but the direction is clear. This affects many industries such as real estate and insurance.

In case of real estate, the impact of limiting interest deduction up to ₹2 lakh has had a detrimental effect. For example, if a person takes a loan of ₹1.4 crore to buy a property for ₹2 crore. His rental income would be around 2.4 per cent or ₹4.8 lakh a year. He will pay 8 per cent on his home loan or ₹11.2 lakh a year. So, renting out would mean a loss of ₹6.4 lakh a year. Of this, he can offset ₹2 lakh as interest income under Section 24(b). This loss can ...

The new optional tax regime is likely to become the only one available in a few years. This will affect real estate

house and taking home loans was unheard of.

Allowing owners who stayed in their own houses to treat the annual income as nil was a real concession in those days, especially since the deductible expenses were not high. To ensure this "concession" was not misused, this treatment was restricted to one self-occupied house. A second self-occupied house was taxed as if it had been rented out.

Later, more people started borrowing. As the number of people who started claiming interest deduction increased, the amount of deduction was restricted for the one self-occupied property. Meanwhile, the yields fell to around ... cent, and since interest rates were high, it always ... in a ... after ... a dee... Tax... cov... so-... ad... o... p...

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